SUPREME COURT, U. S.
FILED
JAN 30 1974
MICHAEL RODAK, JR., CLERK

73-1168

IN THE SUPREME COURT OF THE UNITED STATES

Spring Term, 1974

GWENDOLYN GILL KEITT
DANNY EDWARD COBB
Petitioners

v

STATE OF NORTH CAROLINA
Respondent

* * * * * * * * * * * * * * * * * * *

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

* * * * * * * * * * * * * * * * * * *

Herman L. Taylor

Taylor & Upperman
P. O. Box 20383
Greensboro, N. C.
Telephone: 274-3785
COUNSEL FOR PETITIONER
GWENDOLYN GILL KEITT

Walter T. Johnson, Jr.

FRYE, JOHNSON & BARBEE
Southeastern Building
Greensboro, N. C.
Telephone: 273-8463

TABLE OF CITATIONS

Shiever v State 230 P. 2d 282

Federal Rules of Criminal Procedure, Rule 41(h)

Coolidge v New Hampshire 91 S. Ct. 2022

Zap v United States 66 S. Ct. 1277

Katz v United States 88 S. Ct. 507

People v Joyner 278 N.E. 2d 756

STATUTES INVOLVED

7A-271, N. C. G. S.

7A-27(b), N. C. G. S.

90-95(a)(3), N. C. G. S.

I N D E X

CITATION TO OPINION BELOW. 1

JURISDICTION 2

QUESTIONS PRESENTED 4

STATEMENT OF CASE 5

REASONS FOR GRANTING WRIT 7

CONCLUSION 16

A P P E N D I X

APPENDIX-A,	SEARCH WARRANT #275
APPENDIX-B,	ORDER DENYING MOTION TO SUPPRESS
APPENDIX C,	OPINION OF COURT OF APPEALS OF NORTH CAROLINA
APPENDIX D,	ORDER DENYING PETITION FOR CERTIORARI TO NORTH CAROLINA

A P P E N D I X

(cont.)

COURT OF APPEALS
BY SUPREME COURT
OF NORTH CAROLINA

IN THE SUPREME COURT OF THE UNITED STATES

Spring Term, 1974

GWENDOLYN GILL KEITT
DANNY EDWARD COBB
Petitioners

v

STATE OF NORTH CAROLINA
Respondent

TO: THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

Your Petitioners pray that a Writ of Certiorari issue the Supreme Court of North Carolina which Court last heard this case on petition for Certiorari to the Court of Appeals of North Carolina and denied the petition without opinion and to the Court of Appeals of North Carolina, which Court wrote the opinion in this case, STATE OF NORTH CAROLINA v GWENDOLYN GILL KEITT and DANNY EDWARD COBB 7318 SC 682.

CITATION TO OPINION BELOW

The opinion of the Court of Appeals of North Carolina is reported as STATE OF NORTH CAROLINA v GWENDOLYN GILL KEITT and DANNY EDWARD COBB 7318SC682.

J U R I S D I C T I O N

The jurisdiction of this Court is involved under 28 U.S. Code 1257(3). Petition is made to this Court to review the opinion of the Court of Appeals of North Carolina in STATE OF NORTH CAROLINA v GWENDOLYN KEITT and DANNY EDWARD COBB 7318 SC 602 and the denial of a petition for Certiorari by the Supreme Court of North Carolina to the Court of Appeals of North Carolina. The petitioners petitioned the Supreme Court of North Carolina to issue the Writ of Certiorari to the Court of Appeals of North Carolina to review the opinion of the Court of Appeals of North Carolina, but the petition for the writ was denied on November 1, 1973. The petition to the Supreme Court of North Carolina was made in apt time under the Supplementary Rules of Practice of the Supreme Court of North Carolina, Rule 2, and the petition was denied on November 1 and certified to the Court of Appeals of North Carolina on November 1, 1973.

The petition for certiorari to the Court of Appeals of North Carolina is to exhaust all State remedies before applying to this Court. The matters raised here were raised in the Courts below. Jurisdiction of the Court is thus invoked within

the time allowed by Rule 22 of the Revised Rules of the Supreme Court of the United States.

A copy of the opinion of the Court of Appeals of North Carolina and a copy of the Order denying Certiorari by the Supreme Court are attached as Appendixs.

QUESTIONS PRESENTED

I

IS IT CONSTITUTIONAL ERROR TO ADMIT INTO EVIDENCE AGAINST A PETITIONER, NARCOTICS SEIZED FROM THE PERSONAL PROPERTY OF SAID PETITIONER, WHICH PERSONAL PROPERTY HAPPENED TO BE PHYSICALLY LOCATED UPON THE PREMISES OF CO-PETITIONER, AT WHICH CO-PETITIONER AND HIS PROPERTY A SEARCH WARRANT IS DIRECTED, BUT WHERE AS A MATTER OF FACT AND LAW, THE SEARCH WARRANT WAS IN NO WAY DIRECTED AT THE PETITIONER OR HER PERSONAL PROPERTY?

II

IS IT CONSTITUTIONAL ERROR TO SEIZE NARCOTICS FROM ONE PETITIONER'S PERSONAL PROPERTY AT WHICH NO SEARCH WARRANT WAS DIRECTED AND ADMIT SAID NARCOTICS INTO EVIDENCE AGAINST CO-PETITIONER, UPON WHOSE PREMISES PETITIONER'S PERSONAL PROPERTY WAS FOUND AND SEARCHED, AND AT WHICH PREMISES THE SEARCH WARRANT WAS DIRECTED?

STATEMENT OF CASE

This case was tried in the Superior Court of North Carolina, which is the court designated by statute for the trial of felonies, North Carolina General Statute 7A-271. The case of the petitioner Gwendolyn Gill Keitt was consolidated for trial with the case of Danny Edward Cobb. The case was tried upon pleas of not guilty to a charge made in the indictment of possession of a controlled substance, to wit: Heroin.

The jury, returned a verdict of guilty for both defendants. The court imposed sentences of three and five years imprisonment in the State Department of Corrections upon petitioner Keitt and co-petitioner Cobb respectively.

During the trial of the case both defendants properly interposed his constitutional objection to the introduction of evidence which theycontend was the fruit of an unlawful search and seizure. The defendants' objections were overruled to which rulings of the court the defendants excepted.

The case was appealed to the Court of Appeals, which is the North

Carolina Court designated to handle all criminal appeals except those of a capital nature, North Carolina General Statute 7A-27(b). That court found no error in the case. Subsequent thereto, and in apt time, petition was made to the Supreme Court of North Carolina in order to exhaust all state remedies. That court denied the petition on November 2, 1973. The case is brought here within the time alloted by the rules of this Court.

REASON FOR GRANTING WRIT

II

IS IT CONSTITUTIONAL ERROR TO ADMIT INTO EVIDENCE AGAINST A PETITIONER, NARCOTICS SEIZED FROM THE PERSONAL PROPERTY OF SAID PETITIONER, WHICH PERSONAL PROPERTY HAPPENED TO BE PHYSICALLY LOCATED UPON THE PREMISES OF CO-PETITIONER, AT WHICH CO-PETITIONER AND HIS PROPERTY A SEARCH WARRANT IS DIRECTED, BUT WHERE AS A MATTER OF FACT AND LAW, THE SEARCH WARRANT WAS IN NO WAY DIRECTED AT THE PETITIONER OR HER PERSONAL PROPERTY?

The Writ of Certiorari should be granted in this case to decide in a proper manner whether this defendant-Gwendolyn Gill Keitt-and all others like her all over the country-can have her personal property searched and items seized therefrom, where the police conduct a search of the premises of another pursuant to a search warrant which is in no way directed at Petitioner or her property.

Pursuant to SEARCH WARRANT No. 275 (full text attached infra; APPENDIX A), Law Officers empowered to conduct the search authorized by the warrant were commanded to search Danny Edward Cobb, his property,

room 228 Ramada Inn Motel and the Motor Vehicle he was driving. In his ORDER DENYING MOTION TO SUPPRESS, the Honorable Walter Crissman made the following findings of fact. "(8) That defendant Keitt had no proprietary interest in the Room 288, and that the search warrant was not directed at her or her property. In addition the Court made the following conclusion as a matter of law as to defendant Keitt.(3) As to Gwendolyn Gill Keitt, this Court concludes that the search warrant was in no way directed at her. Further, that she has possibly standing to object to the search and seizure but her objection is without merit for all items seized were seized under a properly drawn and issue search warrant, complying with the United States Constitution and North Carolina law. IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the motions to suppress the evidence as being in violation of the Fourth. Amendment of the United States Constitution are DENIED."

The defendant Gwendolyn Keitt submits that the affirmation of the Superior Courts' Judgment by the North Carolina Court of Appeals and denial of her petition for Writ of Certiorari by the North Carolina Supreme Court, means that all of the

defendants so situated as said defendant are subject to searches and seizures of their property where their property happens to be situated on the premises which is the object of a valid search warrant.

This Holding BY THE NORTH CAROLINA COURT OF APPEALS AND NORTH CAROLINA SUPREME COURT IS CONTRA TO THE PRIOR DECISIONS OF THE UNITED STATES and ALSO UNCONSTITUTIONAL BECAUSE THE DEFENDANT HAS A CONSTITUTIONAL RIGHT TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES UNDER THE FOURTH AMENDMENT OT THE CONSTITUTION OF THE UNTIED STATES.

It has been held that although no formula may be stated, a search warrant should be strictly construed. Shiever v State, 230 P. 2d 282. The search warrant in the instant case strictly commanded law officers to search only Danny Edward Cobb, his property, room 228 Ramada Inn Motel and the Motor vehicle he was driving. The Honorable Walter Crissman made the following findings of fact. (8) That defendant Keitt had no proprietary interest in the Room 288 and that the search warrant

was not directed at her or her property. The petitioner contends that even though there was no specific finding of fact made as to whom the plastic bag which contained the heroin belonged, there can be no doubt that all the evidence indicates that the bag was the property of petitioner Keitt.

The STATE proceeded at trial against the petitioner upon the theory that the bag and its contents were her property. During the trial, the evidence produced by the State revealed that the contents of the plastic shopping bag were as follows: One brown paper bag containing 10 bundles of heroin, a blouse, a pull-over blouse, a pair of pajamas, a scarf, shorty pajamas, a pair of hot pants, a sleeveless T-Shirt with a little button down at the bottom underneath, a pair of pink panties, a small bag containing pierced earrings, a portion of a towel or bath cloth, a pack of Winston cigarettes, a Wrigleys Spearment Chewing Gum wrapper.

In addition to the aforementioned items, there was also discovered in the same plastic bag an address book attached by a rubber band to a receipt from the Children's Hospital in Saint Louis Missouri bearing the name of petitioner and petitioner's

son Franklin Louis. There were no other items retrieved from the plastic bag. The witness who made the search of the bag testified that there was absolutely nothing in that bag, that he recalled seeing with co-defendant Cobb's name on it. If that were not enough to establish that the bag was the petitioner's property, the STATE'S WITNESS Huffinger testified that he was a bag "that looked like the bag in question" in the exclusive possession of the petitioner when she carried it into room 228. There is no evidence whatsoever that anyone, other than the petitioner, ever had the bag in his or her actual physical possession. Nor was there any evidence that another bag similar to the one seen in petitioner's sole possession was found in room 228, or known to have been removed from the room after the petitioner carried her bag inside. Consequently, all the evidence indicates that the bag was the property of thepetitioner Keitt, and there is no evidence whatsoever that indicate anything else.

The STATE proceeded at trial upon the theory that, since the searching officers didn't discover all the various women's items, address book and hospital receipt with petitioners name on it until after

they had seized the small brown bag containing the heroin from the plastic bag, the evidence seized should be admitted against the petitioner. The Court's conclusion of law, "that since the bag was situated in room 228 and the search of the plastic bag was lawful", supports the STATE'S contention. The petitioner assigns this as grossly prejudicial error. The evidence reveals that the police officer who swore out the warrant observed a plastic bag in the exclusive possession of the petitioner before and during the time she carried it into room 228, and before the search warrant was sworn out. Consequently, the affiant obviously could have easily included the petitioners property (i.e. the plastic bag he saw in her exclusive possession) among the suspect properties to be searched pursuant to the search warrant if he had chosen to do so. The fact of the matter is that he did not include any of her property among the property to be searched and the judge so ruled when he found as a matter of law that the search warrant was in no way directed, at petitioner's property. There were no exigent circumstances that would justify a warrantless search. Coolidge v New Hampshire 91 S. Ct. 2022. There was no consent requested nor any consent given to the officers

by the petitioner to search her property. Consequently, the constitutional right to be secure against unreasonable searches and seizures was not waived. See Zap v United States 66 S.Ct. 1277. The "plain view rule is not applicable in this case because the heroin was found inside a brown paper bag inside a larger plastic bag. (See People v Joyner 278 NE 2d 756. There are no circumstances in fact or in law that would permit the police to search the petitioner's property without a valid search warrant directed at her property.

II

IS IT CONSTITUTIONAL ERROR TO SEIZE NARCOTICS FROM ONE PETITIONER'S PERSONAL PROPERTY AT WHICH NO SEARCH WARRANT WAS DIRECTED AND ADMIT SAID NARCOTICS INTO EVIDENCE AGAINST CO-PETITIONER, UPON WHOSE PREMISES PETITIONER'S PERSONAL PROPERTY WAS FOUND AND SEARCHED, AND AT WHICH PREMISES THE SEARCH WARRANT WAS DIRECTED?

The co-petitioner, DANNY EDWARD COBB, also prays that the Writ of Certiorari should be granted in this case to decide in a proper manner whether he—and all others like him all over this country—can be

held criminally accountable for narcotics seized from the private personal property of another where it appears that the only nexus between co-petitioner Cobb and the seized narcotics was that the narcotics were discovered and seized from someone elses' personal property which happened to be located on the premises rented by co-petitioner Cobb.

Co-petitioner Cobb relies upon the reasons set forth in part one. (I) of this petition as the basis to conclude that the narcotics seized were found among petitioner Gwendolyn Keitt, and that the search warrant involved was not directed at petitioner Keitt or her personal property. See page _____ supra. Co-petitioner Cobb contends that his rights under the Due Process and Equal Protection Clauses of the Fifth Amendment made applicable to the STATE'S under the Fourteenth Amendment of the United States Constitution were grossly violated to his prejudice when the seized narcotics were introduced as evidence at trial against him. Co-Petitioner Cobb contends that under the command of Search Warrant 245 to search room 228, the searching officers who only empowered to search the area within the four walls including the

dresser, beds, lamps, air vents and other items appurtenant to room 228. The officers were not given authority or commanded to search property known to be the property of one other than Danny Cobb, nor were they given authority to search property that was not a part of room 228.

C O N C L U S I O N

The record in this case revelas clearly that the property from which the controlled substance was seized was the property of petitioner Gwendolyn Keitt and that the search warrant, pursuant to which the property of the petitioner was illegally searched, was not in anyway directed to the petitioner or her property. This Court should grant certiorari to right the wrongs committed in respect to the rights of citizens to be free from unreasonable searches and seizures.

The record fails to reveal that co-petitioner Danny Cobb had a proprietary interest in the plastic bag that contained the paper bag that contained the narcotics seized because all evidence adduced from inside the bag indicate that it belonged to petitioner Keitt. Consequently, even though the bag was physically located in co-petitioner Cobb's room at the time it was searched, the police erred in searching petitioner Keitt's property, and the lower Courts erred in allowing the unlawfully seized narcotics into evidence against co-petitioner Cobb.

The Court should grant certiorari to right the wrong of introducing the narcotics into evidence and by doing so, the court will thereby instruct the inferior courts and law enforcement officers of this country in the proper procedure to follow in these cases.

Respectfully Submitted,

Herman L. Taylor

Herman L. Taylor

Counsel for Petitioner
Post Office Box 20383
Greensboro, N. C. 27420
Telephone:(919)274-3785

Walter T. Johnson, Jr.

Walter T. Johnson, Jr.

Counsel for Petitioner Cobb
Post Office Box 21401
Greensboro, N. C. 27420

SEARCH WARRANT NO. 275

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
GUILFORD COUNTY	DISTRICT COURT DIVISION

Greensboro-Guilford County

STATE v
Danny Edward Cobb, his person, property, and vehicle driven by him, 1972 White over blue Plymouth, N. C. license #6289-C and room 228 Ramada Inn Motel, Greensboro, North Carolina.

To any Lawful Official empowered to conduct the search authorized by this Warrant.
GREETING:

Whereas information has been furnished me by the affiant named in the attached affidavit, who stated under oath that Danny Edward Cobb has certain property described in the said affidavit as Heroin, related in the manner described in the affidavit with the commission of a crime, to wit: Violation of The North Carolina Controlled

Substances Act, and that the said property is located as described in the affidavit. And whereas I have examined under oath the affiant and am satisfied that there is probable cause to believe that the named person has such property at the location described, you are commanded to search Danny Edward Cobb, his property, room 228 Ramada Inn Motel, the Motor vehicle that he is driving 1972 Plymouth, N. C. License #6289-C, for the property in question. If this property is found, seize it and keep it subject to court order.

Herein fail not and of this Warrant make due return.

Issued this 31 day of July 1972, at 9:25 o'clock P.M. upon information furnished under oath by the affiant named below:

SIGNED: J. D. HEFFINGER,
Affiant

By: R.L. Underwood
Magistrate, Guilford
County, North Carolina

Received: 7-31-72
Executed: 7-31-72
By: J. D. HEFFINGER

ORDER DENYING MOTION TO SUPPRESS
(Filed March 1, 1973)

THIS MATTER COMING ON TO BE HEARD and being heard before the undersigned Judge of the Superior Court upon a motion by Danny Edward Cobb, by his attorney, Walter Johnson, and by Gwendolyn Gill Keitt, by and through her attorney, Herman Taylor, to suppress at trial evidence seized on July 31, 1972, by Officers of the Greensboro Police Department, Vice Division.

The Court finds the following facts:

1. The Assistant Solicitor, Howard D. Cole, presented this Court with the Search Warrant, and Affidavit showing it was issued on July 31, 1972, at 9:25 P.M. to search the person of Danny Edward Cobb, Room 228, Ramada Inn Motel, and the motor vehicle, a 1972 Plymouth, N. C. License #6289-C.

2. This Search Warrant was served on Mr. Cobb on July 31, 1972, by J. D. Heffinger. A key to Room 228, Ramada Inn, Greensboro, N. C., a bag of clothes and other articles, including 150 glassine envelopes and other

papers were seized by officers of the Greensboro Police Department.

3. The Affidavit includes, in sufficient form, allegations reciting the basis for concluding that the confidential informant was reliable and that his information which was told to the affiant indicated that he had personal knowledge that, wheen typed in the affidavit, would lead a reasonable prudent person to believe that there were probably controlled substances on the person of Danny Cobb, in the car, and in Room 228, Ramada Inn.

4. That the issuing Magistrate, upon reading the affidavit, could reasonably conclude that the confidential informant was reliable and that from the personal observations of the informant, as recited by the affiant in the affidavit, that the informant saw Cobb and a negro female in a blue and white 1972 Plymouth automobile, N. C. License No. 6289C, and that the informant saw a negro male at the Grove Pool Room ask Cobb for "two halves" and Cobb stated he would be "right back" and drove away.

5. That Cobb went to the upstairs of Ramada Inn and came back to the pool room and handed

two bundles of glassine envelopes with white powder to the same Negro male whom he talked to earlier.

6. That the informer is a user of heroin and knows its appearance and effects.

7. The affiant checked the records at The Ramada Inn at 120 Seneca Road and the records as of July 31, 1972, indicated that Room 228 was rented to D. Cobb at about 2:30 a.m. on July 31, 1972.

8. That the affiant personally saw Danny Cobb at The Ramada Inn in the Plymouth automobile, license number 6289C and saw Cobb enter Room 228 with a key and saw the room was an upstairs room.

9. That defendant Keitt had no proprietary interest in the Room 228, and that the search warrant was not directed at her or her property.

10. That the defendants offered no evidence at the VOIR DIRE hearing.

The Court makes the following conclusions as a matter of law as to defendants Cobb and Keitt:

1. That the search warrant was proper in form and content and that the affidavit is sufficient to show probable cause to the issuing Magistrate to search the person of Danny Edward Cobb, the Plymouth automobile, license number 6289C, and Room 228, Ramada Inn, 120 Seneca Road, Greensboro, N. C.

2. That the Magistrate could reasonably conclude from the affidavit and the facts stated therein that proposed search would reveal the presence of heroin at or in the locations authorized in the search warrant, i.e., the person of Danny Edward Cobb, the Plymouth automobile, N.C. license number 6289C, and Room 228, Ramada Inn, 120 Seneca Road, Greensboro, N. C.

3. And Further: As to Gwendolyn Gill Keitt, this Court concludes that the search warrant was in no way directed at her. Further, that she has possibly standing to object to the search and seizure but her objection is without merit for all items seized were seized under a properly drawn and issued search warrant, complying with the United States Constitution and North Carolina law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the motions

to suppress the evidence as being in violation of the Fourth Amendment of the United States Constitution are DENIED.

This the 27th day of February, 1973.

WALTER E. CRISSMAN
Judge Presiding

Defendant Cobb excepts.
Defendant Keitt excepts.

OPINION OF NORTH CAROLINA COURT OF APPEALS, No. 7318SC602, Filed Sept. 19, 1973

Appeal by defendants from Crissman, Judge, 26 February 1973 Session of Guilford Superior Court (Greensboro Division).

Separate indictments charged that on or about 31 July 1972 defendants "did unlawfully, wilfully and feloniously possess a controlled substance, to wit: Heroin which is included in Schedule I of the North Carolina Controlled Substance Act." They pleaded not guilty.

Evidence presented by the State tended to show:

At approximately 6:30 p.m. on 31 July 1972, Officer Heffinger of the Greensboro Police Department went to the vicinity of the Ramada Inn located on Seneca Road in Greensboro. He concealed himself inside a large garbage transport some 50 to 70 yards north of Room 228 of said Inn from which position he was able to, and did, watch Room 228 with binoculars. The watched room was on the second floor and the outside door of the room opened onto a balcony walkway in full view of the officer. Mr. Heffinger observed a 1972 white over blue Plymouth drive up to the

Inn, the vehicle being operated by defendant Cobb with defendant Keitt as a passenger in the right front seat. After parking the car, defendant Cobb got out, walked up to the front of Room 228 with a key in his hand, and after looking in several directions, unlocked and opened the door to the room. He then returned to the railing of the walkway, looked down at the car he had just parked, and gave a "come on" hand signal.

Defendant Keitt proceeded to get out of the car, went to Room 228, and with defendant Cobb entered the room. About five minutes later defendant Cobb emerged from the room onto the walkway, looked in several directions, and then looked back into the room. Immediately thereafter defendant Keitt came out of the room, went down to the car, opened the trunk, removed a sizeable bag from the trunk and carried it up and into Room 228 where she rejoined defendant Cobb. Officer Heffinger continued to observe the outside of the room and the area for some five or ten minutes after which he left.

Later that night Mr. Heffinger, clothed with a search warrant and accompanied by other officers, re-

turned to the Ramada Inn. Around 10:40 p.m. the officers stopped the Plymouth automobile, then driven by defendant Keitt and occupied by defendant Cobb, as it was entering the Inn premises from Seneca Road. After serving the search warrant on defendant Cobb, the officers searched the car and found a key to Room 228 on the front seat. The officers, together with defendants, proceeded to Room 228 where police opened the door with the key, and they and defendants entered the room. With defendants present, the officers searched the room. In a corner at the end of the room farthest from the front door, they found a plastic bag similar to the one Mr. Heffinger had seen defendant Keitt remove from the car trunk and carry to the room earlier that evening. A man's shirt was on top of the bag.

In the plastic bag the officers found various items of women's clothing and also a brown paper bag smaller than the plastic bag. In the paper bag they found ten bindles of small glassine bags, each bindle containing fifteen glassine bags with a rubber band around each bindle. The glassine bags contained a white powder substance later identified as heroin. In the bottom of the plastic bag, the officer found a St. Louis Children's Hospital

visiting card with defendant Keitt's name thereon as parent. A latent fingerprint, later identified as defendant Keitt's was lifted from one of the glassine bags. The Ramada Inn records revealed that on 31 July 1972, Room 228 was registered in the name of "Mr. and Mrs. Cobb."

Defendants offered no evidence.

A jury found defendants guilty as charged and from judgments imposing prison sentences of five years as to defendant Cobb and three years as to defendant Keitt, defendants appealed.

Attorney General Robert Morgan by William F. Briley, Assistant Attorney General, for the State.

Lee, High, Taylor, Dansby & Stanback by Herman L. Taylor for defendant Gwendolyn Gill Keitt.

Frye, Johnson & Barbee by Walter T. Johnson, Jr., for defendant Danny Edward Cobb.

BRITT, Judge. Defendants assign as error the denial of their motions to be tried separately. This assignment has no merit. The two defendants were charged with identical offenses that were connected and tied together in time,

place and circumstances. The consolidation for trial of the cases charging them with possession of heroin under the facts appearing is fully authorized by the statutory and case law of our State. G.S. 15-152; State v Yoes, et al., 271 N.C. 616, 157 S.E. 2d 386 (1967); State v. Walker, et al., 6 N.C. App. 447, 170 S.E. 2d 627 (1969).

Defendants assign as error the denial of their motions to suppress evidence obtained pursuant to a search of the automobile and the motel room and the admissions of the fruits of the search into evidence. This assignment has no merit.

The record reveals: Upon the call of the cases for trial on 26 February 1973, before arraignment of defendants and in the absence of prospective jurors, defendants made several motions including a motion "to suppress any evidence in the cases seized pursuant to a search warrant." On 27 February 1973 the court resumed its sitting. Defendants were arraigned and pleaded not guilty. Also on 27 February 1973, the court entered an order (briefly summarized) reciting that defendants' motions to suppress evidence came on to be

heard; the court found as facts that the court was presented with a search warrant issued at 9:25 p.m. on 31 July 1972 authorizing a search of defendant Cobb's person, Room 228 of the Ramada Inn, and a 1972 Plymouth bearing N.C.license number 6289-C, that the search warrant was fully supported by an affidavit, that defendants offered no evidence at the voir dire, that defendant Keitt had no proprietary interest in Room 228 and the search warrant was not directed at her or her property; and the court concluded that the search warrant was proper "in form and content" and that defendants' motions to suppress were denied. The affidavit to obtain a search warant and the search warrant are included in the record.

Defendants argue that the court did not conduct a hearing on their motions to suppress evidence and they have filed as an exhibit what purports to be the court reporter's "transcript of proceedings." We must reject the argument and exhibit. It is well settled in this jurisdiction that the record as certified imports verity and the Court of Appeals is bound thereby. 3 Strong, N.C. Index 2d, Criminal Law, Sec. 158, p. 107. This court is bound by the record as certified and can judicially know only what appears of record. State v Shedd, 274

N.C. 95, 161 S.E. 2d 477 (1968).

The certified record before us reveals that there was a hearing on defendants' motions to suppress evidence. The search warrant and the affidavit supporting the same are sufficient to meet the requirements of law, and the order of the trial Judge contains sufficient findings to hold the evidence admissible. Having been sufficiently heard on their motions to suppress, defendants were not entitled to a further voir dire hearing when they objected to the evidence at trial. See State v. Myers, 266 N.C. 581, 146 S.E. 2d 674 (1966); State v. Thompson, 15 N.C. App. 416, 190 S.E. 2d 355 (1972), cert. den. 282 N.C. 307, 192 S.E. 2d 197 (1972). The assignment of error is overruled.

Defendants assign as error the admission into evidence of State's Exhibit 2 which purported to be a Ramada Inn registration folio for the dates 30 and 31 July 1972. This assignment is without merit. In 1 Stansbury's N.C. Evidence, Brandis Revision, Sec. 155, p. 523, it is said: "If the entries were made in the regular course of business, at or near authenticated by a witness who is familiar made, they are admissible." In Supply Co. v. Ice Cream Co., 232 N.C. 684, 686, 61 S.E. 2d quoted rule, said:

"This rule applies to original entries made in books of account in regular course by those engaged in business, when properly identified, though the witness may not have made the entries and may have had no personal knowledge of the transactions." We hold that sufficient foundation was laid for the introduction of the exhibit into evidence.

Defendants assign as error the denial of their motions for nonsuit. We hold that the evidence was more than sufficient to survive the motions and the assignment is without merit.

Defendants assign as error the action of the court in consolidating two other cases against defendant Cobb with the trial of the two cases at hand and then withdrawing those cases from consideration after the trial had begun. This assignment has merit.

The record reveals that in addition to the possession of heroin case, defendant Cobb was charged also in two indictments with possession of marijuana and methadone, all on 31 July 1972. Prior to arraignment and in the absence of prospective jurors, defendants moved for severance of the four cases but the court denied the

motions and allowed the State's motion to consolidate all cases for trial. Thereafter, defendants were arraigned not only on the heroin possession charges but defendant Cobb was arraigned also on the two indictments charging him with possession of marijuana and methadone. Defendants pleaded not guilty to all charges. While the first witness for the State was testifying, the court, in the absence of the jury, determined that since defendant Keitt was not connected with the marijuana and methadone cases, those cases should be tried separately. The court then modified its former ruling and denied the State's motion to try the heroin cases with the other two cases.

In State v. Williams, 279 N.C. 663, 185 S.E. 2d 174 (1971), opinion by Chief Justice Bobbitt, the court reversed a long line of cases and held that for purposes of impeachment, a witness, including the defendant in a criminal case, may not be cross-examined as to whether he has been indicted or is under indictment for a criminal offense other than the offense for which he is on trial. However, the court further held that the circumstances of the particular case will determine whether a de-

fendant will be awarded a new trial for having had to answer on cross-examination that he is currently under indictment for other crimes.

It appears to us that the principle laid down in Williams would apply also to the action of the court complained of here. We think the arraignment of a defendant in the presence of the jury on two untried charges, and then postponing the trial of those charges could have an effect just as harmful, if not more so, as cross-examining a defendant with respect to untried charges. Nevertheless, under the circumstances of the cases at bar, we do not think defendants are entitled to a new trial. The evidence against defendants was strong and convincing, uncontradicted except for the presumption of innocence raised by the pleas of not guilty. In Fahy v. Connecticut, 375 U.S. 85, 84 S.Ct. 229, 11 L. Ed. 2d 171 (1963), it was held that unless there is reasonable possibility that the evidence complained of might have contributed to the conviction, its admission is harmless. We think the same rule would apply to the action complained of here and that although the action was erroneous, it was harmless beyond a doubt. State v.

Taylor, 280 N.C. 273, 185 S. E. 2d 677 (1972).

A careful consideration of the record impels us to conclude that defendants received a fair trial free from error sufficiently prejudicial to warrant a new trial.

No error.

Judges MORRIS and PARKER concur.

No. 71PC EIGHTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

Fall Term 1973

* * * * * * * * * * * * * * * * * *

STATE OF NORTH CAROLINA	)	ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE N.C. COURT OF APPEALS (7318SC602)
v	)	
GWENDOLYN GILL KEITT and DANNY EDWARD COBB	)	

* * * * * * * * * * * * * * * * * *

This matter came on to be considered upon a petition for writ of certiorari to the N. C. Court of Appeals to review its decision on the 1st day of November, 1973, by the Chief Justice and Associate Justices of the Supreme Court of North Carolina, to whom it appeared that the said petition should be denied.

NOW, THEREFORE, it is ordered accordingly by the Court in conference that the petition be and the same is hereby denied, and that it be so certified to the Clerk of the

N. C. Court of Appeals and to counsel for all the parties.

Witness my hand and official seal, this the 2nd day of November, 1973 .

_____
Clerk of the Supreme Court

cc: Lee, High, Taylor, Dansby & Stanback, Attorneys at Law

Frye, Johnson & Barbee, Attorneys at Law

Mr. William Douglas Albright, Solicitor

Mr. William F. Briley, Assistant Attorney General